

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARQUIS RASHAWN DOUGLAS,

No. C11-5370 EMC

Petitioner,

ORDER UPON INITIAL REVIEW

v.

VIMAL SINGH,

Respondent.

Petitioner, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner is represented by counsel.

According to the petition, the California Supreme Court denied Petitioner relief on August 11, 2010. *See* Pet. ¶ III. Petitioner, however, did not file the pending petition until November 1, 2011. Thus, the current petition may be untimely under the AEDPA's one-year limitation period. *See* 28 U.S.C. § 2244(d). This apparent procedural problem should be addressed before the Court reaches the merits of the claims raised in the petition. If the petition is time barred, the litigants and the Court need not expend resources addressing the claims in the petition. Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, Respondent must either (1) move to dismiss the petition on the ground that it is untimely or (2) inform the Court that Respondent is of the opinion that a motion to dismiss is unwarranted in this case.

Good cause appearing therefor,

1 1. The Clerk shall serve by certified mail a copy of this order and the petition upon
2 Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk
3 shall also serve a copy of this order on Petitioner.

4 2. Respondent must file with the Court and serve upon Petitioner, on or before
5 November 26, 2012 [60 days from date of order], a motion to dismiss the petition or a notice that
6 Respondent is of the opinion that a motion to dismiss is unwarranted.

7 3. If Petitioner wishes to oppose the motion to dismiss, he must do so by filing an
8 opposition with the Court and serving it upon Respondent on or before December 26, 2012 [90 days
9 from date of order].

10 4. Respondent may file and serve a reply on or before January 10, 2013 [15 days after
11 opposition brief].

12 5. The motion will be deemed submitted as of the date the reply brief is due. Absent
13 further order of the Court, no hearing will be held on the motion. If Respondent notifies the Court
14 that a motion to dismiss is unwarranted or the motion to dismiss is decided against Respondent, the
15 Court will then determine whether to require an answer to the petition.

16
17 Dated: September 25, 2012



EDWARD M. CHEN
United States District Judge